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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,336	12/04/2003	Stephen M. Stanton	7463-19	7398
24273	7590	07/01/2005	EXAMINER	
MOTOROLA, INC INTELLECTUAL PROPERTY SECTION LAW DEPT 8000 WEST SUNRISE BLVD FT LAUDERDAL, FL 33322			ZARROLI, MICHAEL C	
			ART UNIT	PAPER NUMBER
			2839	
DATE MAILED: 07/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/728,336	STANTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael C. Zarroli	2839	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10, 12-24 is/are rejected.
- 7) Claim(s) 11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/27/05 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7- 8, 10, 14, 16-17 and, 18-20 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gilpin et al.

Gilpin discloses an accessory cover (10) for a communications device (14) comprising: a flap (30); and at least one attachment leg (34), each leg having a proximal end and a distal end (unnumbered fig. 3), the proximal end of each leg

being flexibly connected to the flap (at 84), the distal end of each leg being adapted for connection to the communication device (94), at least a portion of the attachment leg being bendable (fig. 4), wherein the flap is movable between at least a first position (fig. 1) and a second position (fig. 2), wherein the flap remains in the second position fig. 2 irrespective of the positioning of the accessory cover or the communications device (flap would remain closed no matter how the scanning device is turned).

Regarding claim 8 Gilpin discloses that first position, the flap is disposed substantially 90 degrees (fig. 1) relative to the attachment leg(s).

Regarding claim 10 Gilpin discloses that the cover provides a tactile signal or audible signal when the cover is moved between the first and second positions (fig. 4 vibration or sound when movement occurs).

Regarding claim 14 Gilpin discloses that the flap is substantially rectangular (fig. 3).

Regarding claim 16 Gilpin discloses that in the second position, the flap is disposed substantially in the same plane relative to the attachment leg (fig. 3).

Regarding claim 17 Gilpin discloses that the distal end of the at least one attachment leg includes one or more protrusions (fig. 6 near 94), whereby the

protrusions are lockingly received in a corresponding passage on the communication device (col. 5 lines 4+).

Regarding claims 18 and 19 Gilpin discloses that at least one projection (fig. 3 at 60, 62 & 76) extends substantially transversely from the flap, the at least one projection shaped to interface with and substantially surroundingly receive (figures 1 to 2) a connector (18, 16).

Regarding claim 20 Gilpin discloses that the flap includes at least one edge portion, the edge portion including at least one protrusion (112), wherein the at least one protrusion lockingly engages a portion of the communication device (120) so as to retain the communication device in the first position (fig. 2).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 and, 22-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Ohgami et al Hayashi et al.

Regarding claim 1 Ohgami discloses a communication assembly comprising; a communication device (fig. 1) including at least one connector (92, 94) and an opening providing access to the at least one connector (fig. 9); and a cover (22) tethered (fig. 8) to the communication device, at least a portion of the cover being flexible such that the cover is selectively movable between a first position (fig. 2), wherein at least a portion of the cover substantially closes the opening, and a second position (fig. 7), wherein substantially unimpeded access to the connector is permitted, whereby, in the first position, the connector is substantially protected from the infiltration of solid particles and the gross intrusion of liquids (fig. 4).

Regarding claim 22 Ohgami discloses a method of accessing and protecting a connector (87) on a communications device (fig. 1) comprising the steps of: providing a communication device including at least one connector, an opening (20) providing access (fig. 7) to the at least one connector, and a cover (22) tethered (fig. 8) to the communication device, at least a portion of the cover being flexible such that the cover is selectively movable between at least a first locked position (fig. 2), wherein at least a portion of the cover engages at least a portion of the communication device so as to substantially close the opening, and a second locked position (fig. 9); when the cover is in the first position, disengaging the cover from the communication device; and moving the cover toward the second

locked position until the cover locks in place (figures 7 & 9); wherein the cover is substantially prevented from traveling toward the first position such that substantially unimpeded access to the connector is provided.

Ohgami does not specifically mention the material the cover is made from.

Hayashi discloses a cover/flap 3, 4 made of a flexible material col. 2 lines 50-53.

At the time the invention was made it would have been obvious to one of ordinary skill in the art to make the cover of Ohgami from flexible material. The motivation for this is well known in the art and would be to provide a more supple fit for the cover thereby preventing the ingress of contaminants. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice, *In re Leshin*, 125 USPQ 416.

Regarding claims 2-4 Ohgami discloses that the cover is held in the first position at least by engagement between at least a portion of the cover and at least portion of the communication device (fig. 2), wherein the engagement is an interference fit involving the engagement is between at least one projection provided on the cover (unnumbered fig. 9 near 22) and at least one cavity in the opening.

Regarding claim 5 Ohgami discloses that in the second position, the cover is substantially prevented from moving back toward the first position (figures 6 & 9).

Regarding claim 23 Ohgami discloses providing an accessory connector (88, 89) adapted to be received within the communication device connector (fig. 7); and operationally joining the accessory connector and the communication device connector (fig. 7 two headed arrows).

Regarding claim 24 Ohgami discloses that when the cover is in the second position, moving the cover toward the first locked position until at least a portion of the cover engages at least a portion of the communication device (unnumbered fig. 8 near spindle of 22), wherein the cover is substantially prevented from traveling toward the second position (figures 6 & 9).

6. Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Ohgami et al as applied to claim 1 above, and further in view of Hayashi et al. Ohgami does not disclose that the cover is used with a cellular phone. Hayashi discloses a cellular phone (1) with cover (fig. 7) to protect a connector. At the time the invention was made it would have been obvious to one of ordinary skill in the art to utilize the cover device of Ohgami in a cellular phone like the one shown by Hayashi. The motivation for this change would be to keep from misplacing the cover of Hayashi.
7. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Gilpin et al as applied to claim 7 above, and further in view of Imai et al.

Gilpin does not disclose two parallel attachment legs.

Imai discloses two attachment legs (6) in parallel (fig. 2).

At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the attachment leg of Gilpin from one large leg to two parallel legs as taught by Imai. The motivation for this change would be to save on material costs and weight of the device.

8. Claims 12 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Gilpin et al as applied to claim 7 above, and further in view of Imai et al.

Gilpin does not disclose that the attachment leg is comprised of two legs or that the flap is substantially flat.

Imai discloses (fig. 4) two substantially parallel attachment legs (6) connected to a flap (3) that is substantially flat.

At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify the attachment leg and flap structure of Gilpin as taught by Imai. The motivation for this change would be to save space.

9. Claim 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Gilpin et al as applied to claim 7 above.

Gilpin discloses that the attachment leg has protrusions **not slots**; and that these protrusions connect with slots of the communication device.

At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify Gilpin so that the attachment legs have the slots (not protrusions) and that the communication device has the protrusions (no the slots). The reversal of parts is well settled in the art In re Gazda, 219 F. 2d 449, 452, 104 USPQ 400, 402 (CCPA 1955). The motivation for this reversal of parts would be to reduce the profile of the cover device.

10. Claim 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Gilpin et al as applied to claim 7 above.

Gilpin discloses that the flap has at least one protrusion that lockingly engages a portion of the communication device **not that** the communication device has the protrusion that engages a notch of the flap.

At the time the invention was made it would have been obvious to one of ordinary skill in the art to modify Gilpin so that the flap has the notches (not protrusions) and that the communication device has the protrusions (no the notches). The reversal of parts is well settled in the art In re Gazda, 219 F. 2d 449, 452, 104 USPQ 400, 402 (CCPA 1955). The motivation for this reversal of parts would be to reduce the profile of the cover device.

***Response to Arguments***

11. Applicant's arguments filed 5/27/05 have been fully considered but they are not persuasive.

Ohgami reference arguments are not agreed with. Even though Ohgami is not specific about the kind of material the cover is made from the examiner points out that the cover of Ohgami is flexible enough to perform what is recited in claim 1. In the applicant's invention and in Ohgami it is not the cover that is flexible it is the tether. Ohgami has a hinge that tethers the cover to the communication device.

Gilpin reference arguments are not agreed with. As per the language of claim 7 the Gilpin cover would remain closed no matter what position the hand held device is moved.

***Allowable Subject Matter***

12. Claim 11 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Zarroli whose telephone number is 571-272-2101. The examiner can normally be reached on 7:30 to 3:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.C. Patel can be reached on (571) 272-2800 ext 39. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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